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IN THE MATTER OF THE JOINT ) DOCKET NO. W-01656A-98-0577  
APPLICATION OF SUN CITY WATER ) SW-02334A-98-0577  
COMPANY AND SUN CITY WEST )  
UTILITIES COMPANY FOR APPROVAL )  
OF CENTRAL ARIZONA PROJECT )  
WATER UTILIZATION PLAN AND FOR )  
AN ACCOUNTING ORDER AUTHORIZING )  
A GROUNDWATER SAVINGS FEE AND )  
RECOVERY OF DEFERRED CENTRAL )  
ARIZONA PROJECT EXPENSES. )

CLOSING BRIEF

OF

SUN CITY TAXPAYERS ASSOCIATION

Arizona Corporation Commission

DOCKETED

FEB 11 2002

DOCKETED BY

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## STATEMENT OF THE CASE

By its application, Citizens Water Resources Company ("Citizens")<sup>1</sup> requests the Arizona Corporation Commission (the "Commission") to take the extraordinary action of pre-approving the design and estimated costs to pay for a 20.2 mile<sup>2</sup> non-potable distribution system and long-term water exchange agreements that will likely drastically impact the rates for water paid in the Sun Cities for more than 50 years. (Tr. Vol. 1, p. 289, l. 17 – p. 290, l. 5.) Citizens estimates the system will cost \$15,036,691 to construct (PER at p. E-3, Summary of Construction Costs) and, initially, \$87,075 per year to operate and maintain (PER Tables at pp. D-13 and D-60, Annual Cost; O&M Life Cycles; and Ex. S-1 at Schedule CMF-1, l. 15). The system is designed to deliver 6,561 acre feet of Central Arizona Project ("CAP") water to twelve (12) golf courses and four (4) lakes within the unincorporated communities of Sun City and Sun City West (the "Project").

The Commission Staff estimates the Project will cost \$2,659,885 per year of which approximately \$275,612 (or 10.4% at a rate of approximately 12.89 cents per 1,000 gallons)<sup>3</sup> will be paid by the golf course for CAP water. (Ex. S-1, Schedule CMF-1.) Citizens has declared that it will not absorb or carry all or any portion of the ongoing costs to take CAP waters. (CAP Task Force Final Report (the

<sup>1</sup> This case actually involves the two wholly owned subsidiaries of Sun City Water Company ("SC") and Sun City West Utilities ("SCWU"). Further, it is believed that Citizens has now sold its water assets, including SC and SCWU to Arizona-American Water Company. However, Arizona-American Water Company has made no appearance in this case.

<sup>2</sup> Calculated using the linear feet set forth in the Charts on pp. D-13 and D-60 of the Preliminary Engineering Report ("PER").

<sup>3</sup> Calculated as follows: \$275,612 divided by (6,561 x 325.85).

1 "Final Report")<sup>4</sup>, 3/31/98 Minutes at p. 3.) This means the remaining \$2,384,273 per  
2 year is expected to be paid by ratepayers.<sup>5</sup> According to the allocations made by the  
3 Commission, \$1,840,552 (or 77.2%) of the cost responsibility allocated to ratepayers,  
4 is to be borne by Sun City ratepayers. Assuming no change in CAP related costs, Sun  
5 City and Sun City West ratepayers could expect to pay \$119,213,650 over the next 50  
6 years. Of this amount, Sun City ratepayers would be responsible for \$92,027,600.

7  
8 The Commission estimates these costs require the monthly minimum  
9 for Sun City and Youngtown customers to increase by 99% (or from \$5.00 to \$9.95).  
10 The monthly minimums for ratepayers in Sun City West would increase 53% (or from  
11 \$5.00 to \$7.65). This is rate shock. (SCTA-3, pp. 2-5.)

12 The justification for imposing rate shock on Citizens' ratepayers "is to  
13 reduce a portion of [the groundwater] overdraft" (PER at A-1) and thereby address  
14 "decreased water levels, diminished water quality, well failures, increased pumping  
15 costs and more land subsidence" resulting therefrom. (Finding of Fact 18, Decision  
16 No. 62293, p. 18.) Yet, the PER fails to address the Project's impact on (1) water  
17 levels; (2) water quality; (3) subsidence; or (5) pump costs. (Tr. Vol. 2, p. 337, l. 21 -  
18 p. 339, l. 5.) Nor does the PER address whether cost savings could be achieved by  
19 eliminating most of the southern portion of the distribution system serving Sun City  
20 golf courses (Tr. Vol. 1, p. 278, l. 15 - p. 279, l. 14), or by integrating the Project with  
21 Citizens' existing underground storage facility (*Id.* at p. 282, ll. 11-14). Nor does the  
22 PER adequately address the feasibility of a joint facility with the Agua Fria Division.  
23

24  
25 <sup>4</sup> The Final Report was submitted into evidence in Phase one of this Docket.

26 <sup>5</sup> This sum is premised upon the calculations provided by Commission Staff and is after offsetting  
the \$13,780,600 that the golf courses are expected to pay over the same period.

1 Nor does the PER address the terms and conditions of the commitments from golf  
2 courses to participate in the Project. Importantly, under the Water Exchange  
3 Agreement, Citizens will actually pump all the groundwater that the golf courses  
4 would have pumped. The PER provides no evidence that actual groundwater  
5 "savings" will accrue to the aquifer from the Project.

6 In summary, while the PER provides a somewhat more in-depth  
7 analysis of the Project's \$15 million cost, based upon the Engineer's best estimate at  
8 this time. (Tr. Vol. 2, p. 339, ll. 6-10.) However, the Sun City Taxpayers Association  
9 ("SCTA") believes this cost is unconscionable and, when coupled with anticipated  
10 increases in rates for normal operating expenses, creates rate shock. It is  
11 unconscionable because the PER does not address, let alone demonstrate, that the  
12 Project will appreciably impact the environmental harms associated with overdrafting  
13 groundwater. Furthermore, far less expensive alternatives are available including  
14 recharge of all or a portion of the CAP supply or, at a minimum, eliminating all or a  
15 portion of the Sun City distribution system, which is estimated to cost, with a SCADA  
16 system \$7,727,455, or approximately half the total cost of the system.  
17

#### 18 **HISTORICAL BACKGROUND OF THIS PROCEEDING.**

19 To properly analyze the PER, it is necessary to understand its historical  
20 context.

##### 21 **A. Decision No. 60172.**

22 In 1995, Citizens filed a rate application seeking to, *inter alia*, recover  
23 its accrued and ongoing CAP costs. At that time, the 17,654 acre feet of the CAP  
24 water now held by Citizens was allocated as follows: 15,835 acre feet to Sun City  
25  
26

1 Water Company ("SC"), 1,439 acre feet to the Agua Fria Division and 380 acre feet  
2 to Youngtown. No CAP water was allocated to Sun City West Utilities ("SCWU").  
3 (Decision No. 60172, p. 5, ll. 1-5.) By its filing, Citizens proposed to recover these  
4 costs through a flat fee on all monthly water bills. (*Id.* at p. 6, ll. 2-5.) Since the Agua  
5 Fria Division had very few customers at the time, Citizens' proposal would have  
6 placed the majority of the burden of paying for accrued and ongoing CAP charges on  
7 the ratepayers in the Sun Cities with the greatest burden being placed upon ratepayers  
8 in Sun City.<sup>6</sup>

9  
10 The Commission recognized "the Companies held its CAP allocation  
11 for more than 11 years, but has not delivered or put to use any CAP water, and  
12 currently has no final plan for its use." (*Id.* at p. 10, ll. 4-6.) For the first time, the  
13 Commission found "the demand of existing customers [in the Sun Cities] is  
14 contributing to the groundwater depletion of the aquifer, land subsidence and other  
15 environmental damage." (*Id.* at p. 9, ll. 3-5.) The Commission further concluded  
16 there was general agreement "that action should be taken to attempt to rectify the  
17 current situation and prevent further problems, but they do not necessarily agree on a  
18 solution of; who should pay; or how or when payment should be made." *Id.* at p. 9, ll.  
19 7-9.

20  
21 Ultimately, the Commission authorized Citizens to continue to defer  
22 CAP water-related costs, "subject to a development of a plan and date of  
23 implementation by December 31, 2000. If CAP water [was] not implemented by

24  
25 <sup>6</sup> Decision No. 60172 reflected deferred CAP water M&I charges of \$4,635,972 (Decision No.  
26 60172 at fn. 5 (note, the footnote reflects 50% of total)). Ultimately 9,654 acre feet was  
reassigned to the Agua Fria Division, substantially reducing Sun City's rights to CAP water but  
also proportionally reducing its responsibility for deferred and ongoing CAP costs.



1 December 31, 2000, then Citizens [would] lose its ability to defer future costs.” (*Id.*  
2 at p. 10, ll. 14-17.)

3 **B. Development Of A Plan And The CAP Task Force.**

4 In response to Decision No. 60172, and with the endorsement of the  
5 Northwest Valley Water Resources Advisory Board, Citizens pursued both the  
6 reassignment of its CAP allocation between its subsidiaries, as well as the formation  
7 of a CAP Task Force to assist it in evaluating its CAP alternatives. Citizens asked the  
8 Presidents of the Condominium Owners Association, the Property Owners and  
9 Residents Association, the Recreation Centers of Sun City, the Recreation Centers of  
10 Sun City West, the Sun City Homeowners Association, and the Sun City Taxpayers  
11 Association to name two representatives to participate in the CAP Task Force, with  
12 one to be a member of their respective Boards and the second someone familiar with  
13 water resource issues. Youngtown was asked to appoint one representative to the  
14 Task Force. Citizens selected four at-large members.<sup>7</sup> Citizens appointed two  
15 members to represent Citizens, as well as selecting a moderator to conduct the CAP  
16 Task Force meetings.<sup>8</sup> In all, the CAP Task Force was composed of 19 *appointed*  
17 people (6 selected by Citizens). (Final Report, pp. 2-4.)  
18

19 While SCTA supports the concept of community involvement, it felt  
20 strongly that the issue of a CAP alternative should go to a vote of the ratepayers; they  
21 declined to vote on any of the alternatives presented to the CAP Task Force. (Final  
22

23 <sup>7</sup> Bill Beyer, legal counsel to the Recreation Centers, not a resident of the Sun Cities, was selected  
24 as an at-large member.

25 <sup>8</sup> According to the Task Force Meeting Minutes, one representative of the Condominium Owners  
26 Association never attended a Task Force meeting and one at-large member only attended the first  
two meetings.

1 Report, 5/12/98 Minutes at pp. 2-3.) Each alternative was evaluated as a separate  
2 stand-alone concept with no combinations considered. In the end, the golf course and  
3 two recharge sites were the top three alternatives. A Technical Committee rated the  
4 three options almost neck in neck with recharge being their preferred alternative. In  
5 the end, however, the Task Force recommended the golf course option as a stand-  
6 alone alternative, with recharge at the Maricopa Water District ("MWD") as an  
7 interim measure.

8  
9 **C. Decision No. 62293.**

10 Citizens then submitted the Task Force Final Report to the Commission  
11 and requested approval of the plan and for an accounting order authorizing the  
12 groundwater savings fee and recovery of deferred CAP expenses. By Decision No.  
13 62293, the Commission determined that while recharge at MWD "may not be a direct  
14 benefit to the Sun Cities' communities," it "could provide a positive hydrologic  
15 impact on the Sun Cities area," thereby satisfying the used and useful concept.  
16 (Decision No. 62293, at p. 6, ll. 17-20.) As a result, the Commission authorized  
17 Citizens to implement a fee to recover deferred CAP holdings and ongoing CAP  
18 costs.

19  
20 As for a long-term solution, the Commission, based upon the belief  
21 "there is a general agreement in the Sun Cities areas for the Groundwater Savings  
22 Project" (Decision 62293 at p. 16, ll. 19-20), approved "the *concept* of the  
23 Groundwater Savings Project" and approved the reasonable prudent costs associated  
24 with the completion of the preliminary design/updated cost estimate. (*Id.* at ll. 20-22,  
25 emphasis added.) However, recognizing "CAP water at any cost is not necessarily a  
26

1 prudent decision” (*Id.* at p. 19; Finding of Fact 24), and presented with conflicting  
2 engineering opinions regarding the design of the Project, the Commission ordered that  
3 “as part of that design/cost estimate, we will require Citizens to address: a) the  
4 feasibility of a joint facility with the Agua Fria Division, including the timeframe for  
5 any such joint facility; b) the need for all major elements of its proposed plan (e.g.,  
6 storage and booster stations); and c) binding commitments from golf courses, public  
7 and private, and the terms and conditions related thereto.” (*Id.* at p. 16, ll. 22-26.)  
8

9 **D. Citizens’ Efforts To Submit The PER And Binding Commitments.**

10 The Commission ordered the PER to be filed within six months of the  
11 effective date of the Decision (i.e., August 1, 2000). (*Id.* at ll. 26-28.) The parties  
12 were entitled to submit comments and the Hearing Division was to set the matter for  
13 hearing or submit a recommendation to the Commission. (*Id.* at p. 21, ll. 4-11.)  
14 Citizens submitted a PER prior to the deadline and requested an extension of time to  
15 submit binding commitments from the golf courses. Two Water Exchange  
16 Agreements were submitted October 31, 2000. These Agreements did not contain  
17 Exhibits A or B, nor did they include commitments from any private golf courses,  
18 although the PER had identified Briarwood Country Club and Hillcrest Golf Club as  
19 playing critical roles in the Project. (PER at A-4.) Comments on the PER and the  
20 Water Exchange Agreements were filed. Staff and SCTA, for different reasons,  
21 argued Citizens had not fully complied with Decision No. 62293. Subsequently,  
22 Citizens filed a Water Exchange Agreement involving the Briarwood Country Club,  
23 together with the various Exhibits A and a supplemental Engineering Report  
24 addressing the Project without Hillcrest participation. Exhibit B to the Exchange  
25  
26

1 Agreements (the Operating Agreements) were not submitted for review until August  
2 2001, a year after original Commission imposed deadline. Citizens represented that  
3 the Operating Agreements "deal exclusively with operational details (i.e.,  
4 maintenance procedures, access rights and delivery schedules)". (See, Citizens'  
5 Response to Comments, dated December 18, 2000 at p. 11, ll. 3-5.) This  
6 representation was misleading, if not patently false. As discussed *infra*, the Operating  
7 Agreements added a key element to the exchange; the leasing of Type II Rights from  
8 the Recreation Centers of Sun City to Citizens and Citizens leasing thereof to the  
9 Recreation Centers of Sun City West, which in turn would lease them to Briarwood  
10 Country Club. These additional leased Type II grandfathered rights would be used to  
11 replace General Industrial Use Permits that expire in August 2005.  
12

13 **E. The Present Proceeding.**

14 The Hearing Division did not initially set the matter for hearing.  
15 Instead, a Recommended Order was submitted to the Commission for consideration  
16 approving the PER. The Commission directed that a hearing be conducted. By  
17 Procedural Order dated June 5, 2001, the Hearing Division specified the scope of this  
18 proceeding as "whether the Applicants' Preliminary Engineering Report complies  
19 with Decision No. 62293". Thus, the testimony submitted by SCTA was limited to  
20 whether the PER provided a reasonable cost estimate and whether it adequately  
21 addressed: a) the feasibility of a joint facility with the Agua Fria Division, including  
22 the timeframe for any such joint facility; b) the need for all major elements of its  
23 proposed plant (e.g., storage and booster stations); and c) binding commitments from  
24 golf courses, public and private, and the terms and conditions related thereto.  
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## STATEMENT OF THE ISSUES

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1. Does the PER adequately address the binding commitments from the golf courses, public and private, and the terms and conditions related thereto?
  2. Does the PER adequately address the need for all major elements of the proposed plan?
  3. Does the PER adequately address the feasibility of a joint facility with the Agua Fria Division, including the timeframe for any such joint facility?
  4. Does the PER provide sufficient information to allow the Commission to authorize Citizens to proceed with a pipeline project estimated to cost \$15,036,691 and could cost ratepayers approximately \$2,384,273 for each and every year for the next 50 years?

## ARGUMENT

I. THE PER FAILS TO ADEQUATELY ADDRESS THE BINDING COMMITMENTS FROM THE GOLF COURSES, PUBLIC AND PRIVATE, AND THE TERMS AND CONDITIONS RELATED THERETO.

Despite the Commission's direction that the PER address the binding commitments and the terms and conditions thereof (Decision No. 62293, at p. 16, ll. 25-26), the Water Exchange Agreements ultimately executed by Citizens are not discussed in the PER. Of course, the Agreements did not exist at the time the PER was filed.

A. **No Water Exchange Can Occur Until Permitted By ADWR.**

A.R.S. § 45-1001, *et seq.* governs the terms and conditions upon which a water exchange may take place in Arizona. The water exchange is defined as "a trade between one or more persons....if each party has a right or claim to use the

1 water it gives in trade. This definition applies whether or not water is traded in equal  
2 amounts or other consideration is included in the trade.” (A.R.S. § 45-1001(6).)  
3 A.R.S. § 45-1002 prohibits water exchanges unless the statute is satisfied. Citizens  
4 acknowledges that its Water Exchange Agreements must be submitted to the Arizona  
5 Department of Water Resources (“ADWR”). (Tr. Vol. 2, p. 379, ll. 12-16.) Citizens  
6 further admits they have not made such a filing with ADWR. (*Id.* at p. 379, l. 17 – p.  
7 380, l. 23.)  
8

9 Citizens claims they have delayed making such a filing until the  
10 Commission acts. However, they were required by the Commission’s Decision to  
11 submit binding commitments by August 1, 2000. It is now February 2002. Under  
12 Arizona law, they have no authority to proceed with any water exchange until the  
13 water exchanges are permitted by ADWR<sup>9</sup>. Citizens is asking the Commission to  
14 approve a \$15 million project when the underlying Agreements critical thereto have  
15 yet to be submitted to ADWR. Without the water exchange, there is no need for the  
16 Project.

17 **B. No Water Exchange Agreement Exists If The Recreation Center**  
18 **Did Not Have Authority To Execute It.**  
19

20 The authority of the Recreation Centers of Sun City to execute the  
21 Water Exchange Agreement with Sun City Water Company is subject to judicial  
22 challenge in *Sun City Taxpayers Association, Inc., et al. v. Recreation Centers of Sun*  
23 *City and Sun City Water Co., Inc.*, Maricopa County Superior Court Case No.  
24

25 <sup>9</sup> It should also be emphasized that the parties have an absolute right to terminate the Agreements  
26 at any time because the conditions contained in paragraph 6 have not been satisfied. (*See*, A-6,  
A-7 and A-8.)

1 CV2001-006415. SCTA contends, *inter alia*, that the Recreation Centers' Board  
2 exceeded its authority by executing the Water Exchange Agreement without first  
3 submitting the question to a vote of its members. While the Court has entered a  
4 Minute Entry granting the Defendants' Motion to Dismiss this action, the parties are  
5 still awaiting final ruling on pending motions, including a Motion to Amend the  
6 Complaint. Further, SCTA has indicated its intent to appeal any adverse final  
7 judgment. (Tr. Vol. 1, p. 191, ll.1-6.) If SCTA ultimately prevails, no binding  
8 commitment exists.

9  
10 **C. Participation Of Golf Courses Was Improperly Precluded.**

11 The PER does reflect that golf courses were improperly excluded from  
12 participation: "Upon commencing negotiations with the Recreation Centers of Sun  
13 City, the Recreation Centers expressed a desire to have exclusive rights to exchange  
14 the CAP water with Sun City Water Company." (PER at A-4.) Based upon this  
15 stated preference, and the apparent threat that the Recreation Centers of Sun City  
16 would not participate at all if they were not provided exclusive rights to CAP water,  
17 no negotiations were performed with private golf courses. Yet, Citizens  
18 acknowledges that it is possible to eliminate most of the southern portions of the Sun  
19 City golf courses and take the entirety of the CAP allocation. (Tr. Vol. 1, p. 278, l. 15  
20 - p. 278, l. 14.)<sup>10</sup>

21  
22 As to the participation of Deer Valley Golf Course and Desert Trail  
23 Golf Course, the PER only states "these courses cannot participate in the GSP because

24  
25 <sup>10</sup> This represents a potential cost savings of \$7,516,441 in construction costs; \$6,803,639 for the  
26 distribution system (PER at D-60); and \$712,802 for the Sun City automated central Supervision  
Control and Data Acquisition ("SCADA") control system (PER at D-65). The associated annual  
O&M costs are \$50,902.

1 they do not have groundwater rights.” This statement is wrong. A.R.S. § 45-1002  
2 (dealing with water exchanges) expressly authorizes water exchanges involving  
3 effluent. In fact, HDR did analyze improvements to the existing system so that  
4 effluent could be directly delivered to these two golf courses. This analysis was not  
5 included in the PER. (Tr. Vol. 1, p. 258, ll. 15 – p. 260, l. 3; Vol. 2, p. 334, l. 13 – p.  
6 335, l. 14.)  
7

8 **D. A Water Exchange Does Not Automatically Equate To Water**  
9 **Savings.**

10 Water Exchange Agreements require the Recreation Centers and  
11 Briarwood to provide Citizens one acre foot of groundwater for every acre foot of  
12 CAP water received. (Paragraph 1 of A-6, A-7 and A-8; Tr. Vol. 2, p. 382, ll. 19-23.)  
13 Thus, for every acre foot of CAP water delivered to the golf courses, Citizens is  
14 entitled to withdraw an acre foot of groundwater. The PER does not address whether  
15 any actual savings will occur.

16 Citizens argues it already has the right and obligation to withdraw all  
17 the groundwater it is pumping, so the water exchange does not increase its  
18 groundwater pumping. (A-5, p. 10, ll. 1921.) On the other hand, Citizens  
19 acknowledges its total water usage in Sun City and Sun City West “exceeds the  
20 conservation targets”. (Tr. Vol. 2, p. 384, ll. 10-14.) In order to continue pumping  
21 groundwater without facing penalties, Citizens is currently offsetting that overdraft by  
22 recovering credits for reclaimed water and CAP credits earned from recharging at  
23 MWD. In effect, it continues to pump groundwater, but ADWR labels it CAP water  
24 and effluent and not mined groundwater. (*Id.* at ll. 14-22.) If the water exchange  
25 serves to facilitate Citizens exceedance of mandated water conservation, they really  
26



1 are not promoting "savings", just penalty avoidance. Further, Citizens intends to meet  
2 any new demands caused by growth in Sun City and Sun City West from pumping  
3 groundwater. (Tr. Vol. 2, p. 387, ll. 10-12.) The water replenished by the Central  
4 Arizona Groundwater Replenishment District ("CAGRDR"), to support the new  
5 growth, can be stored anywhere within the Phoenix Active Management Area. (*Id.* at  
6 p. 387, ll. 13-16.) To the extent the water exchanges serve to facilitate growth, there  
7 is no groundwater savings.<sup>11</sup>  
8

9 **E. There Are Insufficient Groundwater Rights In Sun City West To**  
10 **Assure The Golf Courses Will Be In Operation And Able To**  
11 **Participate In The Water Exchange After August 2005.**

12 The five participating golf courses in Sun City West have an annual  
13 demand of 3,735 acre feet. Currently, they have grandfathered rights in excess of that  
14 amount. However, as of August 2005 their General Industrial Use Permits will expire  
15 reducing their rights to withdraw groundwater to a level of 2,329.73 acre feet per year  
16 leaving the golf courses 1,405.27 acre feet deficient. (SCTA-1 at p. 8.). As reflected  
17 in Attachment DH-6 to SCTA-1, only Pebble Brook Golf Course will have sufficient  
18 groundwater rights to meet its annual demand. The other golf courses will each need  
19 to secure between 232 acre feet and 604 acre feet of new water or substantially scale  
20 back their operations or go out of business. The issue is not whether the remaining  
21 2,329.73 acre feet of groundwater rights come close to the 2,372 acre feet of CAP  
22

23 <sup>11</sup> At the same time, Citizens was actively pursuing this Project on the basis of the need to bring  
24 groundwater into the Sun Cities areas, a draft water management plan was prepared proposing  
25 that both existing and new water demands in the northern portion of the Agua Fria Division's  
26 service area adjacent to the Sun Cities (above Greenway Road) (projected at 13,100 acre feet at  
build-out) be satisfied exclusively by groundwater. (SCTA-5, Table 7-1). One must question  
why the ratepayers of Sun Cities are being asked to spend millions of dollars to save groundwater  
so Citizens can continue to pump groundwater next door in its Agua Fria Division.

1 water allocated to Sun City West, as suggested by Citizens (A-5 at p. 3), but whether  
2 the golf courses have sufficient groundwater rights to stay in business at all; or  
3 whether they will be required to significantly reduce their turf area. If either occurs,  
4 the feasibility of the Project, as currently designed for Sun City West, is at risk.

5 Citizens next argues the water rights deficiency has been addressed  
6 through the pooling arrangement contained in the Operating Agreement. (A-5 at p. 3,  
7 l. 16 – p. 4, l. 8.) Under the pooling concept, the Recreation Centers of Sun City will  
8 lease its Type II groundwater rights to Citizens, who in turn will lease them to the  
9 Recreation Centers of Sun City West. (See, A-9, A-10 and A-11 at Paragraphs 6.) On  
10 a year of average annual use, the Sun City golf may have 1,700 acre feet of Type II  
11 Rights available for lease. (Tr. Vol. 2, p. 413, ll. 15-22.) However, Type II Right No.  
12 58-101680-0000 in the amount of 1,428 acre feet is held by Sunland Memorial Park,  
13 not the Recreation Centers. (See, SCTA-8.) Mr. Larson was informed and testified  
14 that the Recreation Centers of Sun City have “a contractual arrangement [with  
15 Sunland Memorial Park] that allows them to utilize the water right held in the name of  
16 Sunland Park.” (Tr. Vol. 2, p. 437, ll. 1-7.) In response to our post-hearing request  
17 for such an agreement, Mr. Beyer provided the documents attached hereto as  
18 Attachment A. While the Agreements appear to allow the Recreation Centers to use  
19 water on the golf courses being served as of in 1975 (Attachment A at ¶5), there is no  
20 provision authorizing the Recreation Centers to lease the water right to third parties.  
21 Under such circumstances, the pooling arrangement is insufficient to cover the deficit  
22 created in Sun City West water rights.  
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1           Finally, Mr. Larson contends that the deficiencies could also be  
2 addressed through the effluent, or credits related thereto, generated at the wastewater  
3 treatment plant owned by Citizens. (Tr. Vol. 2, p. 437, l. 15 – p. 438, l. 2.) In fact,  
4 SCTA supports the further exploration of integrating the Project with Citizens'  
5 effluent system (*see*, SCTA-1, pp. 14-17 and SCTA-2, pp. 4-6); however, the PER has  
6 not performed such an evaluation. Further, under existing arrangements, effluent  
7 cannot be made available directly to the Briarwood Golf Course. (Tr. Vol. 2, p. 434,  
8 ll. 2-8.) Citizens states that through assigning, leasing or otherwise manipulating  
9 existing effluent, Type I and Type II Rights, it can free-up sufficient water rights to  
10 meet the water demands of the Recreation Centers' golf courses and the water  
11 demands of Briarwood Golf Course. (Tr. Vol. 2, p. 437, l. 15 – p. 438, l. 16.) Yet,  
12 Citizens never demonstrates such a capability. The fact that "the companies have  
13 relied on what the Recreation Centers of Sun City West have told us about their water  
14 rights" (Tr. Vol. 2, p. 437, ll. 8-12), in proposing to proceed with this expensive  
15 Project, provides no comfort to SCTA. There are serious unanswered questions  
16 regarding the capability to move water as proposed by Citizens. The Sun City West  
17 golf courses have grandfathered water rights that are about to expire. Yet, nothing in  
18 the PER addresses these concerns. In fact, when the PER was drafted, the Operating  
19 Agreement that now provides a pooling arrangement with the Recreation Centers of  
20 Sun City did not even exist, and yet discussions of expiring water rights was totally  
21 excluded from the PER.  
22  
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1           **F.     Other Issues Exist With The Water Exchange Agreements.**

2           There are numerous other concerns arising from the Water Exchange  
3 Agreements that the PER fails to address.

4           1.     No Limitation On Place Of Use.

5           First, there is no specification or limitation on where Citizens may put  
6 the exchanged water to use. Compare A-6, A-7 and A-8 at ¶8, which restricts the  
7 location of use by the golf courses. This may present a problem with ADWR  
8 approval. See, A.R.S. § 45-1051(A)(5), which requires legal descriptions of the lands  
9 on which the water will be used. As a result nothing precludes Citizens from entering  
10 into a water exchange (e.g., with its Agua Fria Division) to use the groundwater  
11 obtained from the golf courses outside the Sun Cities.  
12

13           2.     The Agreements Intentionally Misstate The Golf Courses' Right To  
14                 Withdraw Groundwater From Company Wells.

15           Paragraph 4 of all the Exchange Agreements (Ex. A-6, A-7 and A-8)  
16 provide: "For the purpose of satisfying the Arizona Department of Water Resources  
17 requirements for exchanging Type I Rights...the parties hereby state that the  
18 Recreation Centers [and/or Briarwood] has a theoretical right to withdraw  
19 groundwater at the locations where the Water Company will withdraw the exchanged  
20 water." Citizens testified that this was set forth to meet a legal requirement for water  
21 exchanges. Citizens also testified that as to groundwater rights based upon a Type I  
22 Right, this theoretical right does not exist. (Tr. Vol. 2, p. 395, l. 3 – p. 397, l. 21.)  
23 This intentional deception may present a problem with ADWR approval.  
24  
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1                   3. Citizens' Right To Terminate The Agreement To Convert CAP  
2                   Water To Potable Uses Could Leave The Sun City Distribution  
3                   System Useless.

4                   Under paragraph 6.3d of the Water Exchange Agreements, Citizens  
5 reserves a right to terminate the Water Exchange Agreements if CAP water is needed  
6 for potable deliveries. If and when this section is invoked, the portion of the system  
7 proposed located below Beardsley Road, after Citizens' water campus, would become  
8 unnecessary. (Tr. Vol. 2, p. 397, l. 22 – p. 400, l. 2.)

9                   4. Citizens Commits To Deliver More CAP Water To Sun City West  
10                   Than The Project Is Designed To Deliver.

11                   The combination of amounts set forth in paragraph 7 of the Briarwood  
12 Water Exchange Agreement (A-8) and the Recreation Centers of Sun City West (A-7)  
13 total 3,200 acre feet. This exceeds the 2,372 acre feet of delivery capacity the Project  
14 is designed to deliver to Sun City West. (Tr. Vol. 2, p. 402, ll. 11-18.)

15                   5. Water Quality Obligations Of Citizens Are Ambiguous.

16                   Under paragraph 12 of the Water Exchange Agreements, Citizens  
17 agrees to "deliver water to the Recreation Centers [and/or Briarwood] suitable for use  
18 for irrigation of golf courses at the Point of Delivery". (A-6, A-7 and A-8.) No water  
19 quality standards are set forth, leaving the provision ambiguous and a potential area of  
20 conflict in the future.

21                   6. Maintenance Provisions For The Existing Effluent System Are  
22                   Inadequate.

23                   Under paragraph 9 of the Water Exchange Agreement with the  
24 Recreation Centers of Sun City West, Citizens assumes responsibility to maintain the  
25 existing distribution system in Sun City West (A-7 at p. 7), however, Citizens  
26

1 expressly excludes replacements of major sections or components needed to address  
2 widespread deterioration, design/material failures, subsidence, natural disaster, or  
3 other such factors. The Agreement does not obligate that the Recreation Centers of  
4 Sun City West have to make these major repairs. Therefore, there is no guarantee that  
5 major repairs will be timely made. (Tr. Vol. 2, p. 403, l. 23 – p. 405, l. 18.) Since,  
6 the PER contains no evaluation of the current state of the existing distribution system,  
7 even though it is not being used today (Tr. Vol. 2, p. 406, ll. 1-10), the potential for  
8 major repairs is unknown.

9  
10 The foregoing provisions in the Water Exchange Agreements should  
11 raise concerns with the Commission as to whether, in the long-term, there is sufficient  
12 specificity to ensure that the Project will continue to operate smoothly if it is  
13 constructed.

14 **G. The Water Exchange Is Not The Groundwater Savings Project**  
15 **Originally Contemplated.**

16 When presented to the CAP Task Force, the Project was described as  
17 follows:

18 “Like the groundwater savings project/exchange with MWD,  
19 Citizens would enter into an agreement with local golf  
20 courses to delivery raw CAP water through a non-potable  
21 distribution system for irrigation use on local golf courses that  
22 have historically pumped groundwater. By doing this, every  
23 gallon of groundwater not pumped by local golf courses  
24 would be preserved for drinking water in the Sun Cities.  
25 Citizens would need to obtain a groundwater savings facility  
26 permit from the Arizona Department of Water Resources  
27 (“ADWR”) to operate the project. Additionally, Citizens  
28 would need to obtain the accompanying water storage permits  
29 and recovery well permits.

1 Like MWD, Citizens would also obtain an exchange permit  
2 and negotiate an exchange agreement with local golf courses  
3 in the event the groundwater savings project could not be  
4 operated. With the local golf courses, however, it is unlikely  
5 that such a back-up mechanism would be necessary since the  
6 golf courses are exclusively dependent on groundwater  
7 whereas MWD has surface water rights to the Agua Fria  
8 River in addition to groundwater to meet agricultural  
9 demands.”

10 As noted above, a “groundwater storage facility” requires securing a  
11 permit from the ADWR. (See, A.R.S. § 45-812.01; Tr. Vol. 2, p. 377, l. 4 – p. 479, l.  
12 2.) To ensure actual “savings” will be realized by a proposed groundwater savings  
13 facility, the statute requires ADWR to determine all of the following apply:

- 14 1. Operation of the facility will cause the direct reduction or  
15 elimination of groundwater withdrawals by means of delivery of  
16 water other than groundwater that the recipient will use in lieu of  
17 groundwater that the recipient would otherwise have used.
- 18 2. The water will be used on a gallon for gallon substitute basis directly  
19 in lieu of groundwater.
- 20 3. The in lieu water is the only reasonably available source of water for  
21 the recipient other than groundwater.
- 22 4. The water delivered as in lieu water would not have been a  
23 reasonable alternative source of water for the recipient except  
24 through operation of the groundwater savings facility.
- 25 5. The water delivered to the recipient as in lieu water was not  
26 delivered before October 1, 1990.
6. The applicant has submitted a plan satisfactory to the director that  
describes how the applicant will prove the quantity of groundwater  
saved at the facility each year.

A.R.S. § 45-812.01.

1           Additionally the statutory scheme relating to groundwater savings  
2 facilities contain notice and objection provisions. (A.R.S. § 45-871.01.) In short, the  
3 applicant for a groundwater storage facility must demonstrate to the satisfaction of the  
4 ADWR that there will be an actual savings of water. Such affirmative demonstration  
5 of water "savings" is not required of a water exchange. Compare, A.R.S. § 45-1001,  
6 *et seq.* Thus, by converting the Project from a true groundwater savings facility to an  
7 exchange, Citizens is avoiding demonstrating, on an annual basis, that "savings" are  
8 actually occurring.

9  
10           **H. The Terms Of The Water Exchange Agreements Are Unjust to**  
11           **Ratepayers.**

12           Under the Water Exchange Agreements, the golf courses will be paying  
13 only 80% of their current pumping costs. (*See*, Paragraph 10, A-6, A-7 and A-8.). In  
14 other words, the golf courses are agreeing to take CAP water at a cost less than what  
15 they are currently paying. As a result, the golf courses are expected to pay  
16 approximately \$275,612 a year to receive 6,561 acre feet of water. (S-1, Schedule  
17 CMF-1.) In contrast, the ratepayers are being asked to pay \$2,384,273 per year. (*Id.*)  
18 In addition, the participating golf courses in Sun City West are acquiring lease rights  
19 to the Type II Rights from the Recreation Centers of Sun City to address the water  
20 deficiency they face in 2005 for no additional consideration. Mr. Larson testified an  
21 acre foot of CAP water is being marketed by Indian communities at a price of  
22 approximately \$1,500 per acre foot in addition to paying the actual ongoing costs of  
23 the CAP water. (Tr. Vol. 2, p. 423, l. 24 – p. 426, l. 19.) Thus, if the Type II Rights  
24 were actually available and utilized to satisfy the deficit created from the expiration of  
25 the General Industrial Use Permits, the golf courses in Sun City West are receiving a  
26



1 value of what, if they were to seek an Indian lease, would be worth approximately  
2 \$2,107,905 (1,405.27 acre foot deficiency times \$1,500 per acre foot). (Tr. Vol. 2, p.  
3 424, ll. 1-7.)

4 The question of whether these terms are fair and reasonable to Sun City  
5 ratepayers must not be ignored by the Commission. The answer is a resounding,  
6 NO!<sup>12</sup>

7 II. THE PER DOES NOT ADEQUATELY ADDRESS THE NEED FOR ALL  
8 MAJOR ELEMENTS OF THE PROPOSED PROJECT.

9 A. **A Hydrologic Evaluation Is Necessary To Establish A Base Case**  
10 **And To Demonstrate The Effectiveness Of The Project.**

11 As explained by Mr. Hustead, this Project is different than the normal  
12 golf course design project. The purpose is not simply to meet the water needs of the  
13 golf course. The purpose, and the sole specification for pursuing the Project are to  
14 provide benefits to the aquifer underlying Citizens' services areas in the Sun Cities.  
15 (PER, A-1; SCTA-1 at p. 4, ll. 2-5.) Therefore, in order to provide a complete  
16 evaluation of the Project, the PER must review "all alternatives, which would  
17 maximize the goal (i.e., the benefits to the aquifer underlying the Sun Cities while  
18 minimizing the costs), and compare the alternatives based upon the relative costs to  
19 achieve the goal." (*Id.* at ll. 12-14.) In order to truly evaluate the Project, it is  
20 necessary to determine to what degree the Project, as proposed, increases benefits to  
21 the aquifer over less expensive alternatives such as delivering CAP water only to Sun  
22  
23

24 <sup>12</sup> The Recreation Centers had four representatives, plus their legal counsel voting as part of the  
25 CAP Task Force. If the CAP Task Force was really a governing body, these persons, whose  
26 organizations would directly and significantly benefit financially from the transaction, would  
have been precluded from voting.

1 City West golf courses and recharging any excess CAP water at either (i) Citizens'  
2 existing underground storage facility at its water campus or (ii) the Agua Fria  
3 underground storage facility. (*Id.* at p. 11, ll. 1-25.) Without a hydrologic analysis,  
4 the Commission is merely comparing costs without evaluating how those costs are  
5 being expended in relation to the goal that is sought to be achieved.

6 **B. The Failure To Consider Maximizing CAP Deliveries Renders The**  
7 **PER Incomplete.**

8 As recognized by Citizens, the more places they have where they can  
9 shunt water temporarily, the better. (Tr. Vol. 1, p. 287, ll. 2-4.) However, Citizens  
10 also testified that it designed the Project to ensure use of every drop of CAP water  
11 allocated to the Sun Cities on golf courses. (*Id.* at ll. 13-20.) Citizens made no  
12 analysis of the cost savings that could be achieved by reducing this objective. (*Id.* at  
13 ll. 21-24.) Citizens has no idea of the incremental cost of bringing the last 10 acre  
14 feet to the golf courses. (*Id.* p. 287, l. 250 – p. 288, l. 2.) Nor did Citizens study  
15 whether there was any other configuration of golf courses in Sun City and Sun City  
16 West that could take all of the CAP allocation. It only studied the configuration that it  
17 now proposes. (Tr. Vol. 1, p. 271, l. 23 – p. 279, l. 5.) Citizens further testified that  
18 the stance of both Recreation Centers with regard to who they will allow to participate  
19 and how they would allow their systems to be used caused Citizens to significantly  
20 narrow the focus of the PER based upon the preferences of some of the major parties  
21 involved. (Tr. Vol. 1, p. 264, l. 20 – p. 265, l. 2.)

22  
23 As a result of this narrowed focus and an unwillingness to explore  
24 alternatives that would minimize the amount of distribution system, the PER  
25 evaluation is incomplete. As Mr. Hustead testified, there are opportunities to  
26

1 eliminate or minimize the new distribution system proposed for Sun City by any or a  
2 combination of the following: by maximizing deliveries to Sun City West golf  
3 courses; by maximizing deliveries in the northern portion of Sun City (Tr. Vol. 1, p.  
4 45, l. 20 – p. 46, l. 17); by integrating operations of the Project with the existing  
5 underground storage facility owned and operated by Citizens (which Citizens did not  
6 own or operate at the time the CAP Task Force met or when the Commission  
7 considered the CAP Task Force Final Report (SCTA-1, p. 14, l. 17 – p. 17, l. 18));  
8 and by utilizing use of the Agua Fria underground storage facility or the MWD  
9 groundwater savings facility as a means of providing operating flexibility and as a  
10 substitute use for a portion of the CAP allocation. (SCTA-1, p. 7, l. 19 – p. 8, l. 4.)<sup>13</sup>  
11

12 Undoubtedly, Citizens will criticize Mr. Hustead for not having  
13 conducted a detailed cost analysis of his proposals. However, that was the  
14 responsibility of Citizens. Decision No. 62293 required the PER to address the need  
15 for all major elements of its proposed plan. If Citizens has, as SCTA contends, failed  
16 to demonstrate the need for all major components of the Project, the PER is  
17 incomplete and the Project must be rejected.

18 Citizens will undoubtedly argue that many of these concepts were  
19 previously raised by SCTA and Mr. Hustead in this proceeding. In fact, Citizens  
20 contends that the PER was limiting its review to the configuration it proposed in the  
21 last proceeding. (Tr. Vol. 1, p. 215, l. 4 – p. 216, l. 8.) Such an argument is  
22

23 <sup>13</sup> The Commission should be aware that Citizens recognized its concept of spreading CAP water  
24 between golf courses “leaves an additional capacity of around 5,000 acre feet available to other  
25 water providers and for entities like the Central Arizona Groundwater Replenishment District and  
26 the Arizona Water Banking Authority” and offered this additional capacity at the incremental cost  
of expanding the Project. (SCTA-9, p. 91.) Citizens estimated the capital cost of a system to  
meet the entire groundwater demand of the golf courses at \$18,856,000.

1 nonsensical. The Commission specifically required binding commitments from  
2 private as well as the public golf courses. No private golf courses were included in  
3 Citizens' original proposal. Clearly, the Commission anticipated Citizens would  
4 investigate the cost savings that could accrue from having additional golf courses  
5 participate. The purpose of that participation necessarily was to facilitate  
6 maximization of deliveries of CAP water on the fewest number of golf courses  
7 possible so as to eliminate distribution facilities. Further, the Commission ordered  
8 Citizens to review the feasibility of a joint facility with the Agua Fria Division.  
9 Again, this was beyond the scope of its original proposal. Citizens' suggestion that  
10 the Commission expressly approved its original design and that it was only required  
11 to study that design is contrary to the express provisions of the Decision.  
12

13 **C. Citizens Has Not Justified An Automated SCADA System.**

14 SCTA does not dispute the convenience inherent in an automated  
15 SCADA system. However an automated SCADA system is not necessary to  
16 orchestrate water deliveries from a central point. (SCTA-2, p. 14, ll. 22-23.) As  
17 explained by Mr. Hustead, Citizens only needs to obtain or require periodic  
18 measurements of the lake levels and proposed water orders on a regular schedule.  
19 This information could be communicated orally and reviewed and analyzed by  
20 Citizens to place orders with the Central Arizona Water Conservation District  
21 ("CAWCD"). Golf course personnel could then operate the valves. (*Id.* p. 14, l. 18 –  
22 p. 15, l. 4.) CAWCD orders are made approximately one day ahead of time and are  
23 made for the entire system. (*Id.* at p. 15, l. 24.) "The bottom line is that an automated  
24 SCADA system is a convenience, with a significant cost." (*Id.* at p. 16, ll. 1-2.) It  
25  
26

1 should be noted that this is an additional expenditure not proposed to the CAP Task  
2 Force. Such expensive add-ons should not be pre-authorized by the Commission. It  
3 is simply not a necessary component of the project and should not be implicitly or  
4 otherwise approved by the Commission at this time.<sup>14</sup>

5 III. THE PER DOES NOT ADEQUATELY ADDRESS THE FEASIBILITY OF  
6 A JOINT FACILITY WITH THE AGUA FRIA DIVISION.

7 This issue involves primarily the PER's evaluation of the Beardsley  
8 Canal and Alternative E. Citizens is developing a master plan for the Agua Fria  
9 Division. A draft master plan was developed by Brown & Caldwell and was relied  
10 upon in the PER to base its decisions as to the timing and nature of facilities that were  
11 being planned for the Agua Fria Division. Citizens has subsequently distanced itself  
12 from that master plan (Tr. Vol. 1, p. 243, ll. 4-6) and indicated that a new master  
13 planning process is underway. Citizens, however, is not attempting to coordinate the  
14 development of a CAP delivery system for the Agua Fria Division with one for the  
15 Sun Cities. To the contrary, as reflected in the PER, Citizens intends to construct a  
16 completely separate CAP system for the Agua Fria Division. (PER C-1.)

17  
18 Mr. Husted testified that with further analysis, use of the Beardsley  
19 Canal, in conjunction with improvements to the existing distribution system offers the  
20 best opportunity to minimize capital costs. (SCTA-1, p. 29, ll. 8-13.) While SCTA  
21 stands by the testimony of Mr. Husted relating to the inadequacy of the PER's  
22 analysis relating to the joint use facility and Alternative E, as set forth in SCTA-1 at  
23

24  
25 <sup>14</sup> Mr. Husted also raised issues regarding booster station costs and right-of-way costs. While this  
26 information was inaccurate in the PER, they have been supplemented adequately to eliminate  
these issues from serious consideration.

1 pp.18-25 and in SCTA-2, pp. 10-14, SCTA is now convinced that it is impracticable  
2 for SCTA to continue to advocate a joint facility where both Citizens and the  
3 Recreation Centers actively oppose this alternative. This does not mean that SCTA  
4 supports burdening the ratepayers with the additional costs incurred because these  
5 alternatives were not fully explored by Citizens. Since Citizens and the Recreation  
6 Centers have made it clear they will not support this alternative, further study is futile.  
7 The Commission, however, can and should refuse to approve the Project.  
8

9 IV. THE PER PROVIDES INSUFFICIENT INFORMATION TO ALLOW THE  
10 COMMISSION TO AUTHORIZE CITIZENS TO PROCEED WITH A  
11 PIPELINE PROJECT ESTIMATED TO COST \$15,036,691 AND AN  
12 ULTIMATE COST TO RATEPAYERS OF \$2,384,273 FOR EACH AND  
13 EVERY YEAR FOR THE NEXT 50 YEARS.

14 In the end, the Commission must determine whether it wishes to pre-  
15 authorize the Project as currently designed. There are significant issues concerning  
16 the Water Exchange Agreements themselves. The exchanges have not been approved  
17 by ADWR. The authority of the Recreation Centers of Sun City to execute the Water  
18 Exchange Agreements is still subject to judicial challenge. There is no dispute on this  
19 record that the PER did not attempt to evaluate whether the distribution system could  
20 be eliminated or minimized. There is no dispute that Citizens intends to utilize the  
21 water exchange (as well as its existing CAP and effluent recharge efforts) to avoid  
22 accounting for its withdrawal of groundwater as groundwater. The bottom line is that  
23 this allows Citizens to withdraw more groundwater. Therefore, no assurance exists  
24 that the exchange can legally proceed or will save groundwater at the end of the day.

25 The golf courses are paying only approximately 10% of the entire cost  
26 of this Project. Despite having a direct financial interest in the outcome,

1 representatives of the golf courses actively participated in and voted on, as part of the  
2 CAP Task Force, the alternative now being approved. Yet, the alternative was only  
3 narrowly approved over recharge options.

4 The focus of the PER was substantially narrowed due to the objections  
5 of the Recreation Centers relating to use of their facilities and participation of private  
6 golf courses. Subsequent to the CAP Task Force, the Agua Fria underground storage  
7 facility has been constructed and Citizens acquired the underground storage facility to  
8 use in conjunction with its wastewater treatment plant. Despite these changes in  
9 circumstances, there was no attempt to evaluate integration of these facilities in any  
10 manner with the delivery of water to golf courses.  
11

12 Finally, the impact on the ratepayers cannot and must not be ignored.  
13 Increases in revenue requirement for the Sun City Water Company of 25% can be  
14 expected to flow from this Project. Based on the nature of the customers, this could  
15 cause rate shock. (SCTA-3, pp. 2-5; RUCO-1, p. 4, ll. 20-21.) Based upon these  
16 factors, it is SCTA's position that the PER does not justify the Commission  
17 authorizing the Project as presently designed, especially the installation of an entirely  
18 new distribution system to serve Sun City golf courses.

#### 19 CONCLUSION AND RECOMMENDATIONS

20 SCTA continues to believe that this matter is of community-wide  
21 interest and should be decided by community vote. SCTA further recommends that  
22 the Commission not pre-authorize this Project. Instead, the Commission merely  
23 should authorize Citizens to continue to recharge and encourage Citizens to do so at  
24 the Agua Fria underground storage facility once it is fully operational.  
25  
26

1           Although, not supported by SCTA at this juncture, if the Commission  
2 were to approve any component of the Project, that approval should be limited to the  
3 pipeline along Lake Pleasant Road and interconnection with Sun City West. At the  
4 same time, Citizens should be ordered to study integration of its existing underground  
5 storage facility and use of effluent with the Project and attempt to maximize deliveries  
6 in Sun City West. Based upon those additional studies and actual operational  
7 experience, Citizens could propose an expansion of the Project to golf courses in the  
8 northern portion of Sun City, but only to the limited extent necessary to make use of  
9 most of its allocation within the Sun Cities.  
10

11           Further, any Commission approval of any portion of the Project should  
12 contain an express provision that the prudence of the Project and rates will be  
13 determined in a future rate proceeding, as suggested by Staff Witness Thornton. (Tr.  
14 Vol. 2, p. 454, ll. 1-18.)

15           Finally, the Commission should act to ensure that any CAP water paid  
16 for by ratepayers is not to be used to support new growth or increased groundwater  
17 withdrawals by Citizens.

18           Respectfully submitted this 11th day of February, 2002.

19                           MARTINEZ & CURTIS, P.C.

20  
21  
22 By: 

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Attorneys for Sun City Taxpayers Association



1 Original and ten (10) copies filed this 11th day of February, 2002 with:

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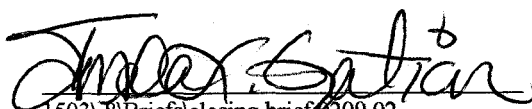
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24   
25 15031-8 Briefs/closing brief 0209.02  
26

# **ATTACHMENT A**

AGREEMENT

THIS AGREEMENT made and entered into this 22nd day of September, 1975, by and between ARIZONA TITLE INSURANCE AND TRUST COMPANY, AS TRUSTEE OF TRUST #6325, hereinafter referred to as "Trustee", and RECREATION CENTERS OF SUN CITY, INC., a non-profit corporation, hereinafter referred to as "Centers".

W I T N E S S E T H:

WHEREAS, Trustee currently has title to certain property, a description of which is attached as Exhibit "A" and made a part hereof by reference thereto, said property consisting of seven golf courses located in Sun City, Maricopa County, Arizona, and a lake known as Viewpoint Lake, also located in Sun City, Maricopa County, Arizona; and

WHEREAS, pursuant to the provisions of Trust #6325, Centers is the primary beneficiary of said trust; and

WHEREAS, pursuant to the terms of Trust #6325, the primary beneficiary may take title to all the property owned by said trust;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Trustee agrees to convey to Centers and Centers hereby agrees to accept from Trustee all right, title and incidents of ownership to all property known as the River-view, Willowbrook, Willowcreek, Lakes East, Lakes West, South and North golf courses in Sun City, Arizona, and Viewpoint Lake in Sun City, Arizona, consisting of and including but not limited to the real property described in Exhibit "A" attached hereto and made a part hereof, and all buildings and improvements,

LAW OFFICES OF  
GEO. ROSENFELD, DWYER & HENDERSON  
SUN VALLEY CENTER  
201 NORTH CENTRAL AVENUE  
PHOENIX, ARIZONA 85012  
(602) 257-1212

including pump stations, located thereon, on the 1st day of June, 1977, subject to the following provisions and conditions:

1. Trustee shall, at Centers' option, provide to the Centers, budgetary and financial advice to assist Centers in the operation of the golf courses and Viewpoint Lake. Centers may, prior to June 1, 1977, form a committee which shall meet with representatives of the Del B. Webb Development Co., who currently manage said courses, to review on a frequent basis, records and reports, including financial records and reports, relating to the operation of the golf courses and Viewpoint Lake so as to enable Centers to become knowledgeable as to the requirements of the operation of the golf courses and Viewpoint Lake. Centers' committee may make recommendations on a quarterly basis as to the operation and maintenance of the golf courses and Viewpoint Lake. Trustee shall make available after May 31, 1977, the services of Mr. Mike Britt, or an alternative acceptable to Centers, to assist in the orderly transition and operation of the golf courses to Centers. Such assistance from Mr. Britt will be at the expense of Trustee. If Centers so desires, Trustee shall furnish to Centers, at Trustee's expense, assistance in the training of personnel to operate the pro shop facilities.

2. All contracts currently in force relating to the management and leasing of the pro shops and snack bar facilities on the golf courses, including the lease with Sun City Pro Shops, Inc. and any contracts for the operation and maintenance of the golf courses and Viewpoint Lake, shall be terminated effective the close of business on May 31, 1977. If any of said contracts are not so terminated, Trustee agrees to indemnify and hold Centers harmless against any debts, liabilities, expenses and obligations which are incurred by Centers by reason of said failure to effectively terminate said contracts.

In addition, Centers shall not be obligated in any manner to purchase, or assume liability for, any inventory, supplies or consignments on hand as of June 1, 1977. Any expenses incurred prior to June 1, 1977, shall be paid by Trustee.

3. It is the understanding of Centers that Trustee shall have, prior to June 1, 1977, increased total annual golf revenues to that level which, when taking into account only those revenues from members of Centers and their guests, shall be equal to or greater than the total annual expenses incurred in the operation and management of the golf courses after taking into account the savings in labor expense and taxes, if any, resulting from possession of the courses by Centers as set forth below. It is the intent of Trustee that the golf courses will be managed in such a way as to match the income derived with the expenses incurred in the operation of the golf courses, thereby making the entire operation attain a break-even point. It is expected that the subsidy provided in paragraph 11 herein, plus the possible savings in labor expenses and taxes resulting from possession of the courses by Centers, will bring the level of the cost of such golf course operation to a point where there should be no immediate increase in golf course rates after May 31, 1977.

4. Trustee also hereby agrees to convey to Centers and Centers hereby agree to accept from Trustee on June 1, 1977, all right, title and interest to the wells, pumps and water distribution systems as more particularly described in Exhibit "B" attached hereto and incorporated by reference. The well, pump and water distribution system located on the Lakes East and Lakes West golf courses presently supplying Viewpoint and Dawn Lakes, shall continue to be used to supply Viewpoint and Dawn Lakes. The evaporation and seepage losses from the lakes

shall be determined by Centers and the owners of property fronting on Viewpoint Lake shall be charged for actual pumping costs as recorded in paragraphs 5, 6 and 7 of the Declaration of Restrictions, Docket No. 7745, Page 669. Such losses and charges are to be determined on the same basis and using the same formula as has been used by the previous title owners of the lake.

5. Trustee shall convey to Centers a water right supplying, to the extent the existing well located at Sunland Memorial Park has the capacity, the golf courses with the same proportionate share of the water from said well, now being supplied to the golf courses served. An accurate measuring device on such well will be provided to determine the percentage of water used on the golf courses and the percentage used for other purposes. Centers agrees to pay, to Webb, on a quarterly basis, its proportionate share of the electrical expense, and, on a yearly basis, its proportionate share of operation and maintenance of said well based upon the percentage of water used for the golf courses.

6. Centers agrees to maintain the golf courses in accordance with the standard which has been in existence for the three years prior to the date of transfer. Centers shall provide adequate water, mowing, fertilizing and other maintenance which may be required on the courses and shall maintain an adequate personnel force to assure the standard noted above is met.

7. The covenants, obligations and representations expressed in this Agreement are continuing and shall not become merged in nor be extinguished by the delivery of the deed conveying the premises and the payment of purchase price by

Centers and shall be binding and inure to the benefit of and shall apply to the respective successors, assigns and legal representatives of Trustee and Centers.

8. Centers shall have the right to a final inspection of all of the property listed in Exhibit "A" not <sup>more</sup> less than <sup>At 12:00 p.m. by 1/1/77.</sup> ninety (90) days before it is proposed to transfer title to <sup>RCSC in 11/11/77</sup> said property to Centers pursuant to the terms of this Agreement, it being understood Trustee shall maintain the courses in accordance with the standard that has existed in the three years prior to the date of this Agreement. Centers agrees to accept the premises existing on June 1, 1977, without any obligation upon the Trustee to take any action to prepare the same for use by Centers. Centers further states that its acceptance of the condition of the premises is based entirely upon its inspection and not upon any representations or warranties expressed or made by the Trustee.

9. Trustee shall pay all legal fees incurred by and at the direction of the Centers that are directly allocable to the transfer encompassed in this Agreement, including, but not limited to, fees for legal opinions regarding union contracts and the tax status of the entity to which Trustee or Centers makes any transfer. Trustee shall pay for the title insurance premiums, escrow and recording fees, and charges incurred as a result of this Agreement, including real estate taxes and insurance pro-rated to the date of the transfer of the courses.

10. ~~Centers agrees the Del E. Webb Development Co.,~~ its agents and employees shall have the right to enter into and upon the aforementioned property at all reasonable times for the purpose of exhibiting the same to prospective purchasers of homes in Sun City or Sun City West. Centers agree the aforesaid prospective purchasers may use the golf courses and

facilities and payment for such use shall be made by Del E. Webb Development Co. to Centers in accordance with a fee schedule to be determined by Centers or a separate social club operating the golf courses and facilities; however, in no event shall the fee charged for a prospective purchaser be greater than the lowest daily greens fee paid by a member of Centers for the course played. Such right to play shall be limited to one play per prospective purchaser.

11. For the first twenty-four (24) months after conveyance of the property from Trustees to Centers, Trustees shall pay to Centers, on a quarterly basis, the difference between the amount of expenses incurred in the operation of the golf courses and facilities thereon, and Viewpoint Lake, including personal property purchases therefor, and the income derived from such courses during said period. Income shall be defined as all monies received from any source whatsoever due to the operation of the golf courses or the facilities thereon, including but not limited to membership dues, greens fees, operating surplus from prior quarters; any income derived from the operation of the snack bar and pro shop facilities on the property; and all fees received from Viewpoint Lake owners. Expenses shall mean all normal operating expense categories as shown on the book of Trustees as of January 1, 1975, and shall include, but not be limited to, all salaries, wages, repairs, utilities, maintenance, office and operating supplies, ~~insurance, taxes and other expenses directly chargeable and~~ properly applicable to the operation of the golf courses and facilities thereon and Viewpoint Lake. Prior to the payment of the subsidy herein provided, Trustees shall review all income and expenses paid by Centers and shall have the right, after consultation with Centers, to reject as an expense allocable to the subsidy, any expense which is not directly related to the operation of the golf courses, facilities,

*See Appendix 3-1-75*



and Viewpoint Lake. Inasmuch as the golf courses are a major contributor to the maintenance of Viewpoint Lake, Centers agrees that as owner of the golf courses, it shall pay fifty percent (50%) of all maintenance costs of the lake. Such costs shall become part of the total expense for the operation of the golf courses.

12. The use of the golf courses and Viewpoint Lake described in Exhibit "A" is intended primarily for the use of Centers' members and their guests or any separate social club operating the golf courses and facilities.

13. The management of Viewpoint Lake shall be accomplished by a three-man board consisting of the same representatives on the present management board pursuant to the applicable deed restrictions.

IN WITNESS WHEREOF the parties have executed this Agreement by the proper persons duly authorized to do so on the day and year first hereinabove written.

RECREATION CENTERS OF SUN CITY, INC.  
(Formerly Sun City Community  
Association), an Arizona  
non-profit corporation

By Matthew W. Waggoner  
President and Director

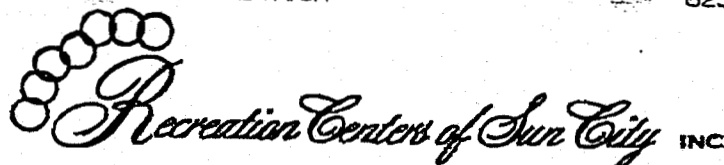
ARIZONA TITLE INSURANCE AND TRUST  
COMPANY, AS TRUSTEE FOR TRUST #6325

By Stanley D. Martin

Approved this 22nd day of September, 1975, by  
the Board of Directors of RECREATION CENTERS OF SUN CITY, INC.

William B. Kern  
William K. Landon  
John D. Leland  
Edwin W. Linder  
Philip M. Smoller

William B. Kern  
William K. Landon  
John D. Leland  
Edwin W. Linder  
Philip M. Smoller



10626 THUNDERBIRD BOULEVARD  
SUN CITY, ARIZONA 85351

FILED  
JUL 15 1982  
1982

July 15, 1982

AGREEMENT BETWEEN RECREATION CENTERS OF SUN CITY, INC., AND  
SUNLAND MEMORIAL PARK (MATTHEWS CORPORATION) FOR PAYMENT OF  
ARIZONA PUBLIC SERVICE BILLS AND MAINTENANCE OF SUNLAND WELL.

1. Arizona Public Service Bills: Recreation Centers of Sun City, Inc. (hereinafter referred to as Centers), will pay a percentage to Sunland Memorial Park (Matthews Corporation) (hereinafter referred to as Sunland) based on actual flowmeter readings for the billing period.
  2. Repairs and Maintenance to Well: Sunland will pay Centers for repairs and maintenance costs based on the prior year's use ratio.
  3. Drip Oil: Will be supplied by Sunland, and Centers will be billed based on prior year's use ratio.
  4. Sunland Distribution Pump: Will be maintained by Centers personnel, and Centers will bill Sunland 100% of costs of material, and 100% of costs of labor as determined by Centers.
- 1981 Use Ratio: 82% Centers  
18% Sunland

Recreation Centers of Sun City, Inc. Sunland Memorial Park (Matthews Corporation)

By: Richard H. Hall

Title: President

Date: July 21, 1982

By: William J. Auer

Title: Vice President / Manager

Date: Aug 5, 1982

N/A  
we do not maintain  
their distribution  
pump per  
letter 12/13/96  
RD